

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

OCT 26 2007

COURT OF APPEALS  
DIVISION TWO

IN RE JESUS L.

) 2 CA-JV 2007-0057

) DEPARTMENT B

) MEMORANDUM DECISION

) Not for Publication

) Rule 28, Rules of Civil

) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 16493201

Honorable Virginia C. Kelly, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney  
By Dale Cardy

Tucson  
Attorneys for State

Robert J. Hooker, Pima County Public Defender  
By Susan C. L. Kelly

Tucson  
Attorneys for Minor

V Á S Q U E Z, Judge.

¶1 The juvenile court adjudicated Jesus L. delinquent after finding him “guilty” of theft by control, a class five felony, and one of two charges alleged in a delinquency petition filed against him. The charges arose from the robbery of a fast food restaurant where Jesus worked. The court placed him on nine months’ probation and ordered him to

serve two weeks in detention and pay restitution in the amount of \$1,170.40. On appeal, Jesus contends there was insufficient evidence that he had participated in the robbery that gave rise to the theft charge. We affirm.

¶2 On review, this court views the evidence presented at the adjudication hearing and all reasonable inferences therefrom in the light most favorable to supporting the juvenile court's order. *In re Jessi W.*, 214 Ariz. 334, ¶ 11, 152 P.3d 1217, 1219 (App. 2007). In evaluating the evidence, we are mindful that it is for the juvenile court, not this court, to resolve any conflicts in the evidence based on its weighing of the evidence and assessment of the credibility of witnesses. *See In re James P.*, 214 Ariz. 420, ¶ 24, 153 P.3d 1049, 1054 (App. 2007). As long as there is reasonable evidence in the record supporting the juvenile court's order, we will affirm it. *In re David H.*, 192 Ariz. 459, ¶ 3, 967 P.2d 134, 135 (App. 1998).

¶3 The state presented sufficient evidence to support the juvenile court's finding that Jesus had committed the charged offense of theft by control. Section 13-1802(A)(1), A.R.S., provides that a person commits this offense if, without legal authority, the person possesses "the property of another with the intent to deprive the other person of such property." The court concluded the state had sustained its burden based on the testimony of a number of witnesses, including one of Jesus's coworkers who was nearby when the robbery took place, and Officer Rydzak, who responded to the scene of the robbery.

¶4 Rydzak testified he suspected Jesus had been involved in the incident after reviewing a security camera's digital versatile disc (DVD) recording of the incident, which was admitted in evidence and is part of the record. He described the way Jesus was "leaning out the [restaurant's drive-through] window" and the way the vehicle depicted "pull[ed] back [and] forward." Rydzak added that the two persons shown in the DVD appeared to be engaged in a dialogue, "and that seemed strange to me." He also described how Jesus had taken money out of the cash drawer, put it back, closed the drawer, and then had taken it out again. Rydzak testified further that, after viewing the recording, he had spoken to Jesus's coworker, Tai Phan, who initially denied knowing anything about the robbery but then made statements implicating Jesus.

¶5 Phan testified Jesus had told him about three or four weeks before the incident that he "was thinking of—he was planning on robbing [the restaurant]," adding, "and I thought he was joking." According to Phan, on the night of the incident, a few minutes before it occurred, Jesus had told him that "there was going to be a robbery." Further, according to Phan, before the robbery took place, Jesus had asked the manager if he and Phan could change workstations, which they did; Jesus went to the window for drive-through customers, taking from Phan the headset that was used to hear and talk to customers. Phan stated, "He told me he was going to rob the [restaurant], and I said I don't want nothing to do with it so here's the headset, I'm going to the bathroom."

¶6 According to Phan, the robbery took place two or three minutes after he gave Jesus the headset. Phan testified further that he had seen a car drive up to the window and had seen Jesus take money out of the cash drawer but that Phan had then walked to the “front” because he “didn’t want to be there.” Phan identified the driver of the car as Jesus’s brother. On cross-examination, Phan admitted he had not been honest with Rydzak initially because he was “scared” but later had told him about Jesus’s involvement. Phan also admitted he and a female employee had been “joking around,” and he had been pushing her and “flirting” with her while the car was at the window.

¶7 The manager of the restaurant testified that, approximately three or four hours before the robbery occurred, Jesus had been in a “desperate or worried state . . . and . . . was sending a lot of messages on his phone.” The manager estimated there had been about \$1,300 in the cash register that evening and denied having given anyone permission to take the money. Jesus testified at the adjudication hearing and denied any involvement in the incident, insisting he had been “robbed at gunpoint.”

¶8 That there was conflicting evidence about whether Jesus had been involved in the incident does not render the evidence insufficient, as Jesus suggests in his opening brief. Rather, as previously stated, it was for the juvenile court to weigh the evidence and resolve such conflicts. *See James P.*, 214 Ariz. 420, ¶ 24, 153 P.3d at 1054. In doing so, the court implicitly rejected Jesus’s denial of culpability and found him not credible, while apparently believing Phan, as was its prerogative. The court had before it and reviewed the DVD,

noting specifically that, in its view, the DVD “corroborates [Phan’s] testimony in the most important respect[s] . . . .”

¶9 The record before the juvenile court contained reasonable evidence that Jesus had intentionally deprived the restaurant of its property without authority to do so. *See* § 13-1802(A)(1). The juvenile court’s order adjudicating Jesus delinquent and its disposition order are, therefore, affirmed.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge